IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 9TH JANUARY 2007 / 19TH PAUSHA 1928

Crl.MC.No. 2276 of 2006()

AGAINST THE ORDER DATED 30/04/2005 IN CMP 7470 2005 IN ST.694/2005 of JUDL.MAGISTRATE OF FIRST CLASS-II, THAMARASSERY

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PETITIONER: ACCUSED:

A.P. IBRAHIM,
PROPRIETOR, STAR VIEW HOTEL, KOZHIKODE DISTRICT.

BY ADV. SMT.SREEKALA KRISHNADAS
SRI.SARUN KUMAR.M.S.

RESPONDENTS: COMPLAINANT AND STATE:

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1. THE DISTRICT LABOUR OFFICER, KOZHIKODE.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 09/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 2276 of 2006

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Dated this the 9th day of January, 2007

O R D E R

Against the petitioner a complaint has been filed alleging that he has committed the offence punishable under Section 29 of the I.D. Act. The petitioner entered appearance before the learned Magistrate and raised an objection that the cognizance taken is bad in law in as much as it does not comply with the mandate of Section 34(1) of the I.D. Act. The learned Magistrate considered the objection and by the impugned order overruled the same and held the complaint to be justified. Aggrieved by the said order, the petitioner has come to this court with this petition under Section 482 Cr.P.C. to quash the proceedings.

2. What is the grievance? The learned counsel for the petitioner submits that the Regional Joint Labour Commissioner, who had authorised the complainant/respondent herein to lodge a complaint, does not have the requisite legal authority under Section 34 to authorise the District Labour Officer to file the complaint.

3. It will be apposite in this context to refer to Sections 34(1) and Section 39 of the I.D. Act, which I extract below:

> "S.34. Cognizance of offences - (1) No Court shall take cognizance of any offence punishable under this Act or of the abetment of any such offence, save on complaint made by or under the authority of the appropriate Government."
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> S.39. Delegation of powers - The appropriate Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act or rules made thereunder shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also, -
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> (a) where the appropriate Government is the Central Government, bu such officer or authority subordinate to the Central Government or by the State Government, or by such officer or authority subordinate to the State Government, as may be specified in the notification; and
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> (b) where the appropriate Government is a State Government, by such officer or authority subordinate to the State Government as may be specified in the notification."
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> (emphasis supplied)

4. It is not disputed that the Government of Kerala by S.R.O.No. 1259/91 had delegated its powers to the Regional Joint Labour Commissioner, Kozhikode to exercise the powers of the Government in respect of all matters including that under Section 34 within the revenue district of Kozhikode. Document No.4 produced along with the complaint

shows that the Regional Joint Labour Commissioner had, in turn, authorised the District Labour Officer, the complainant herein, to file a complaint against the petitioner under Section 29 of the I.D. Act.

5. The learned counsel still contends that the authorisation by the Regional Joint Labour Commissioner under Section 34 is not sufficient or adequate. I am unable to agree. Under Section 39, the powers of the Government have been delegated to the Regional Joint Labour Commissioner, Kozhikode under Section 34 to give authority to any officer to file a complaint. Such power is also thereby delegated to the Regional Joint Labour Commissioner. Whatever the Government can do under Section 34, the Regional Joint Labour Commissioner is authorised by SRO 1259/91 to do. Document No.4 produced along with the complaint clearly shows that the Regional Joint Labour Commissioner has given authority to the District Labour Officer, the complainant herein, to file the complaint. In these circumstances, I do not find any merit in the challenge raised.

6. This Crl.M.C. is accordingly dismissed.

(R. BASANT)
Judge

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